

REMARKS

Applicant thanks the Examiner for the time spent during two phone interviews on February 9th and 23rd in which independent claims 12 and 34 were discussed. The results of the interviews are provided below in the remarks addressing independent claims 12 and 34.

Claims 20-33 have been cancelled without prejudice or disclaimer. New claims 34-41 have been added. Claims 12-19 and 34-41 are currently pending. Reconsideration of the pending claims in view of the foregoing amendments and following remarks is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Office Action stated that claims 12-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,626,129 issued to Obert hereinafter “Obert” in view of U.S. Patent No. 832,400 issued to Lyons hereinafter “Lyons”.

To establish a *prima facie* case of obviousness under section 103, three basic criteria must be met. *See* MPEP § 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Second, there must be some reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the Applicant’s disclosure. *Id. citing In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

Moreover, it is improper to combine references where the references teach away from their combination. *See MPEP § 2143.01.* The Office Action's proposed references do not meet the above criteria with respect to the subject matter of the claims. As such, the rejection is respectfully traversed.

Claim 12 features a method of spreading water in an evaporative cooler, by feeding a water stream to a water spreader arrangement and dividing the water stream into a pair of partial streams by flowing the water streams over a first substantially vertical projection at a first level. The first substantially vertical projection then divides the stream into partials streams having a predetermined ratio of flow rates as the stream impinges on the first projection. The two partial streams are each divided into two further streams by flowing each partial stream over an associated one of a pair of further projections at a second level below the first.

Applicant respectfully traverses the rejection since the combination of Obert with Lyons fails to teach or suggest several features found within independent claim 12. For example, neither Obert nor Lyons individually or combined teach or suggest the horizontal flow of material or water required to operate with the first substantially vertical projection of claim 12. Instead, both references teach water or material vertically passing over a horizontal not vertical projection, as depicted in their respective figures. More specifically, the projection 32 identified in Obert is actually described as "a longitudinal reinforcing bar" that water vertically passes over, as shown in Figure 2. *See* Col. 2, Lines 49-50. Similarly, Lyons shows the rice and cereal passing vertically over horizontal gate G. *See* Figures 1 and 2.

By way of another example, neither Obert nor Lyons teach or suggest a first substantially vertical projection that divides the stream into partial streams having a predetermined ratio of flow rates. The redistributor trough 21 of Obert receives water that passes through a distributor grating 26 that comprises a plurality of slots 27. The amount of water that passes into slots 27 is dependent on leveling of the trough 21 making the division of water into predetermined ratios impossible. Lyons also teaches a manually controlled gate G “for controlling the flow of materials into the mixing-chamber E.” *See* Col. 1, Lines 46-49. The manual process taught in Lyons precludes any division into streams having predetermined ratios, since a manually operated process varies by the human intervention resulting in different mixture ratios of the materials passing through the mixing-chamber E every time the operation is executed.

By way of yet another example, neither Obert nor Lyons teach or suggest the two partial streams being divided into two further streams by flowing each partial stream over an associated one of a pair of further projections at a second level below the first. Relying on Lyons, the Office Action stated that Obert fails to teach this element of claim 12. However, Lyons fails to remedy the lack of teaching, since a first vertical projection G that is designed “for controlling the flow of the material into the mixing-chamber E” is only to be followed by a single subsequent projection and not a pair of further projections at a second level below the first as recited in claim 12. *See* Col. 1, Lines 47-51.

Not only does the combination of Obert and Lyons fail to teach the elements of claim 12, but there is no motivation or suggestion to combine the references. Obert, as stated in his title is a distributor based system, while Lyons teaches a mixer that ultimately fails to distribute the materials, but performs just the opposite and consolidates

the rice and cereal after passing through the “lozenged” shaped mixing-chamber E. Lyons states that “[t]he lower end of the mixing-chamber E is provided with an outlet spout H for directing the mixed and blended materials into a bag I or other suitable receptacle.” *See* Cols. 1-2, Lines 54 –59. There can be no motivation to use the Lyons device that consolidates materials when the object of Obert is to distribute water. *See In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (holding that for there to be motivation “particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected the components for combination of the manner claimed”).

During the telephone interviews, Examiner Nguyen gave a positive indication that independent claim 12 would be allowable over Obert and Lyons, but reserved the right to perform an additional search. Since motivation to combine the references is lacking and neither Obert nor Lyons teach or suggest the features of claim 12, and in view of the foregoing, independent claim 12 is not rendered obvious by the combination of Obert and Lyons. Accordingly, claim 12 is in condition for allowance. Claims 13 - 19 either directly or indirectly depend from claim 12 and are patentably distinct from Obert and Lyons for the same reasons as stated with regard to claim 12, and in view of their additional features. Therefore, claims 13 - 19 are in condition for allowance and notice to that effect is respectfully requested.

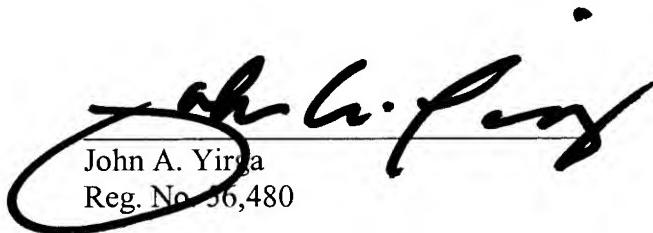
New claims 34 - 41 have been added and are believed to be patentable in view of references Obert and Lyons. During the phone interview of February 23, 2006, Examiner Nguyen gave a positive indication that new independent claim 34 would be allowable over the cited references provided a terminal disclaimer was filed with respect to parent

application number 09/807,138 now U.S. Patent Number 6,669,119 issued December 30, 2003. Examiner Nguyen also reserved the right to perform an additional search. Notice of allowance with respect to new claims 34 - 41 is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the pending claims in this Application are patentably distinct from the cited reference and are in condition for allowance. Prompt notice to that effect is respectfully requested. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 23-0630 for additional fees required under 37 C.F.R. §§ 1.16, 1.17; particularly extension of time fees.

Respectfully submitted,



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